

Montana 2005 Legislative Initiatives and Sample Language

The Need for 45-Day Ballot Transit Time

The most persistent problem which continues to face Montana military and overseas voters is the extremely short period of time these voters have to receive, vote, and return their absentee ballots in order to be counted. While electronic transmission of election materials offers an alternative to inadequate ballot transit time in emergency situations, the fact remains that insufficient ballot transit time through the mail continues to be the primary obstacle to timely delivery of absentee ballots to voters. Our post-election surveys and Postal Service statistics indicate that a **45-day transit time is needed** for absentee ballots sent through international mail or the military APO/ FPO (overseas) post offices. This round trip transit time is especially necessary because of the remote location of many military personnel and overseas citizens such as sailors and marines aboard ship, airmen and sailors at isolated tracking sites around the world, as well as Department of State personnel and citizen employees of American multinational corporations in remote areas. **Forty-one** states now allow 45-day ballot transit time.

Sample Language

For all elections, the official charged with the printing and distribution of ballots and election materials shall print as many absentee ballots as may be necessary as soon as possible after receiving the information concerning candidates and measures to be voted on at an election, and balloting materials shall be mailed not later than the 45th day before the election.

State Special Write-in Absentee Ballot

We also recommend that Montana provide special write-in absentee ballot for all elections. The purpose of the special write-in absentee ballot is to **provide a method for voting by military and other persons overseas who, due to military contingencies or special circumstances such as those faced by submariners, Peace Corps volunteers, missionaries or others in remote areas, will be out of communication for extended periods of time and unable to receive the regular ballot in the normal time frame.** A voter could request a special write-in absentee ballot 90 days in advance when they know that they will be unable to receive, vote, and return the regular ballot in time to be counted. **Twenty-seven** states now provide special write-in absentee ballots.

This write-in absentee ballot should not be confused with the Federal Write-In Absentee Ballot (FWAB) that is prepositioned at embassies and consulates, military installations, overseas organizations and U.S. corporations. In comparison, the FWAB is generally only available to military members on active duty absent from their voting residence and overseas citizens who have already applied for a regular absentee ballot from the state. If the regular ballot does not arrive in sufficient time for the voter to return the voted ballot on time, he may obtain, vote, and return the FWAB to the local election official in its place.

It is also important to note that a write-in absentee ballot usually provides a “full” slate of offices to be voted upon including Federal and local offices. The FWAB generally allows voting for Federal offices only. There are presently **eleven** states that have expanded the use of the FWAB beyond Federal law. The 1995 revised FWAB was designed to accommodate its use beyond the general election and Federal offices only.

Sample Language

If the voter is a U.S. citizen residing outside the United States or a member or family member of the United States Uniformed Services or merchant marine, and a qualified elector, he or she may request, not earlier than 180 days before an election, a special write-in absentee ballot. The voter must submit with the request a statement that provides that due to military or other contingencies that preclude normal mail delivery, the elector cannot vote an absentee ballot during the normal absentee voting period. The ballot will be available "90 to 180" days before the election.

Bring Montana Election Code into Conformance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)

In our recent update to the Voting Assistance Guide it came to our attention that there is a discrepancy in the definition of eligible citizens between the *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)* and the Montana Election Code. Section 13-2-211 of the Montana code defines an “elector in the United States service” as members of the armed forces, merchant marine, religious groups or welfare agencies attached to the armed forces, or citizens temporarily residing outside the U.S. territorial limits, and their spouses and dependents. UOCAVA does not cover members of religious groups or welfare agencies attached to the armed forces unless they are serving overseas. In addition to the other categories of citizens listed in the Montana code, UOCAVA also includes “uniformed services” – the Coast Guard and the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration. (See 42 U.S.C. 1973ff-1 and ff-6.)

We recommend that Montana review the language in the *Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA, 42 U.S.C. 1973ff et seq.)* and make appropriate amendments to the state election law provisions to include the Uniformed Services groups referenced above.

Enfranchise Citizens Who Have Never Resided in the U.S.

There are many U.S. citizens who have never resided in the U.S. and under current law are not entitled to vote. These are usually first or second generation citizens who are subject to U.S. income tax and all other requirements of citizens. Except for the fact that they have never resided in a state, they would be eligible to vote in elections for Federal office. **Thirteen** states have passed legislation allowing these citizens to claim the legal residence of a parent.

We recommend these citizens be allowed to vote in elections for Federal offices where either parent is eligible to vote under UOCAVA.

Sample Language

If a U.S. citizen outside the United States who has never lived in the United States has a parent who is a qualified elector, then that citizen is eligible to register and vote where his or her parent is a qualified elector.

Emergency Authority for Chief Election Official

During a period of a declared emergency or other situation where a short time-frame for ballot transmission is created, it is recommended that **Montana's Chief Election Official have the authority to designate alternate methods for handling absentee ballots** to ensure voters have the opportunity to exercise their right to vote. The Chief Election Official and the Federal Voting Assistance Program could establish expeditious methods for handling absentee ballots including electronic transmission. As an example, in light of the surge of Guard and Reserve forces being deployed, the Chief Election Official can temporarily allow electronics transmission of voting materials for Active Duty Military. **Fifteen** states have passed legislation giving the Chief Election Official authority to designate alternate methods of handling absentee ballots in emergency situation.

Sample Language

If a national or local emergency or other situation arises which makes substantial compliance with the provisions of the Uniformed and Overseas Citizens Absentee Voting Act impossible or unreasonable, such as a natural disaster or an armed conflict involving United States Armed Forces, or mobilization of those forces, including State National Guard and Reserve components of this state, the Chief Election Official may prescribe, by emergency orders or rules, such special procedures or requirements as may be necessary to facilitate absentee voting by those citizens directly affected who otherwise are eligible to vote in the state.

The Chief Election Official shall adopt rules describing the emergency powers and the situations in which the powers will be exercised.